

such subsection, each such agency may exercise, for purposes of enforcing compliance with any requirement imposed under this chapter, any other authority conferred on such agency by law, subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.].

(c) Enforcement and reimbursement

In carrying out its enforcement activities under this section, each agency referred to in subsection (a) of this section shall—

(1) notify the mortgagee or servicer of any failure of the mortgagee or servicer to comply with 1 or more provisions of this chapter;

(2) with respect to each such failure to comply, require the mortgagee or servicer, as applicable, to correct the account of the mortgagor to reflect the date on which the mortgage insurance should have been canceled or terminated under this chapter; and

(3) require the mortgagee or servicer, as applicable, to reimburse the mortgagor in an amount equal to the total unearned premiums paid by the mortgagor after the date on which the obligation to pay those premiums ceased under this chapter.

(Pub. L. 105–216, § 10, July 29, 1998, 112 Stat. 907; Pub. L. 111–203, title X, § 1095, July 21, 2010, 124 Stat. 2101.)

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsecs. (a) and (b)(2), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitle B of the Act is classified generally to part B (§5511 et seq.) of subchapter V of chapter 53 of this title. Subtitle E of the Act is classified generally to part E (§5561 et seq.) of subchapter V of chapter 53 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 105–216, July 29, 1998, 112 Stat. 897, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Federal Credit Union Act, referred to in subsec. (a)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

The Farm Credit Act of 1971, referred to in subsec. (a)(3), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583. Part C of title V of the Act is classified generally to part C (§2261 et seq.) of subchapter V of chapter 23 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, § 1095(1)(A), inserted introductory provisions and added par. (1) and struck out former introductory provisions and par. (1) which read as follows: “Compliance with the requirements imposed under this chapter shall be enforced under—

“(1) section 8 of the Federal Deposit Insurance Act—

“(A) by the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) in the case of insured depository institutions (as defined in section 3(c)(2) of such Act);

“(B) by the Federal Deposit Insurance Corporation in the case of depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act that are not insured deposi-

tory institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and

“(C) by the Director of the Office of Thrift Supervision in the case of depository institutions described in clause (v) and or (vi) of section 19(b)(1)(A) of the Federal Reserve Act that are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);”.

Subsec. (a)(4). Pub. L. 111–203, § 1095(1)(B)–(D), added par. (4).

Subsec. (b)(2). Pub. L. 111–203, § 1095(2), inserted “, subject to subtitle B of the Consumer Financial Protection Act of 2010” before the period.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 4910. Construction

(a) PMI not required

Nothing in this chapter shall be construed to impose any requirement for private mortgage insurance in connection with a residential mortgage transaction.

(b) No preclusion of cancellation or termination agreements

Nothing in this chapter shall be construed to preclude cancellation or termination, by agreement between a mortgagor and the holder of the mortgage, of a requirement for private mortgage insurance in connection with a residential mortgage transaction before the cancellation or termination date established by this chapter for the mortgage.

(Pub. L. 105–216, § 11, July 29, 1998, 112 Stat. 908.)

CHAPTER 50—CHECK TRUNCATION

Sec.	
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§ 5001. Findings; purposes

(a) Findings

The Congress finds as follows:

(1) In the Expedited Funds Availability Act [12 U.S.C. 4001 et seq.], enacted on August 10, 1987, the Congress directed the Board of Governors of the Federal Reserve System to consider establishing regulations requiring Federal reserve banks and depository institutions to provide for check truncation, in order to improve the check processing system.

(2) In that same Act, the Congress—

(A) provided the Board of Governors of the Federal Reserve System with full authority to regulate all aspects of the payment system, including the receipt, payment, collection, and clearing of checks, and related functions of the payment system pertaining to checks; and

(B) directed that the exercise of such authority by the Board superseded any State law, including the Uniform Commercial Code, as in effect in any State.

(3) Check truncation is no less desirable in 2003 for both financial service customers and the financial services industry, to reduce costs, improve efficiency in check collections, and expedite funds availability for customers than it was over 15 years ago when Congress first directed the Board to consider establishing such a process.

(b) Purposes

The purposes of this chapter are as follows:

(1) To facilitate check truncation by authorizing substitute checks.

(2) To foster innovation in the check collection system without mandating receipt of checks in electronic form.

(3) To improve the overall efficiency of the Nation's payments system.

(Pub. L. 108–100, §2, Oct. 28, 2003, 117 Stat. 1177.)

REFERENCES IN TEXT

The Expedited Funds Availability Act, referred to in subsec. (a)(1), (2), is title VI of Pub. L. 100–86, Aug. 10, 1987, 101 Stat. 635, as amended, which is classified principally to chapter 41 (§4001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATE

Pub. L. 108–100, §20, Oct. 28, 2003, 117 Stat. 1194, provided that: “This Act [enacting this chapter, amending section 412 of this title, and enacting provisions set out as notes under this section] shall take effect at the end of the 12-month period beginning on the date of the enactment of this Act [Oct. 28, 2003], except as otherwise specifically provided in this Act.”

SHORT TITLE

Pub. L. 108–100, §1(a), Oct. 28, 2003, 117 Stat. 1177, provided that: “This Act [enacting this chapter, amending section 412 of this title, and enacting provisions set out as notes under this section] may be cited as the ‘Check Clearing for the 21st Century Act’ or the ‘Check 21 Act’.”

§ 5002. Definitions

For purposes of this chapter, the following definitions shall apply:

(1) Account

The term “account” means a deposit account at a bank.

(2) Bank

The term “bank” means any person that is located in a State and engaged in the business of banking and includes—

(A) any depository institution (as defined in section 461(b)(1)(A) of this title);

(B) any Federal reserve bank;

(C) any Federal home loan bank; or

(D) to the extent it acts as a payor—

(i) the Treasury of the United States;

(ii) the United States Postal Service;

(iii) a State government; or

(iv) a unit of general local government (as defined in section 4001(24) of this title).

(3) Banking terms

(A) Collecting bank

The term “collecting bank” means any bank handling a check for collection except the paying bank.

(B) Depository bank

The term “depository bank” means—

(i) the first bank to which a check is transferred, even if such bank is also the paying bank or the payee; or

(ii) a bank to which a check is transferred for deposit in an account at such bank, even if the check is physically received and indorsed first by another bank.

(C) Paying bank

The term “paying bank” means—

(i) the bank by which a check is payable, unless the check is payable at or through another bank and is sent to the other bank for payment or collection; or

(ii) the bank at or through which a check is payable and to which the check is sent for payment or collection.

(D) Returning bank

(i) In general

The term “returning bank” means a bank (other than the paying or depository bank) handling a returned check or notice in lieu of return.

(ii) Treatment as collecting bank

No provision of this chapter shall be construed as affecting the treatment of a returning bank as a collecting bank for purposes of section 4–202(b) of the Uniform Commercial Code.

(4) Board

The term “Board” means the Board of Governors of the Federal Reserve System.

(5) Business day

The term “business day” has the same meaning as in section 4001(3) of this title.

(6) Check

The term “check”—

(A) means a draft, payable on demand and drawn on or payable through or at an office of a bank, whether or not negotiable, that is handled for forward collection or return, including a substitute check and a travelers check; and

(B) does not include a noncash item or an item payable in a medium other than United States dollars.

(7) Consumer

The term “consumer” means an individual who—

(A) with respect to a check handled for forward collection, draws the check on a consumer account; or

(B) with respect to a check handled for return, deposits the check into, or cashes the check against, a consumer account.

(8) Consumer account

The term “consumer account” has the same meaning as in section 4001(10) of this title.

(9) Customer

The term “customer” means a person having an account with a bank.

(10) Forward collection

The term “forward collection” means the transfer by a bank of a check to a collecting bank for settlement or the paying bank for payment.

(11) Indemnifying bank

The term “indemnifying bank” means a bank that is providing an indemnity under section 5005 of this title with respect to a substitute check.

(12) MICR line

The terms “MICR line” and “magnetic ink character recognition line” mean the numbers, which may include the bank routing number, account number, check number, check amount, and other information, that are printed near the bottom of a check in magnetic ink in accordance with generally applicable industry standards.

(13) Noncash item

The term “noncash item” has the same meaning as in section 4001(14) of this title.

(14) Person

The term “person” means a natural person, corporation, unincorporated company, partnership, government unit or instrumentality, trust, or any other entity or organization.

(15) Reconverting bank

The term “reconverting bank” means—

(A) the bank that creates a substitute check; or

(B) if a substitute check is created by a person other than a bank, the first bank that transfers or presents such substitute check.

(16) Substitute check

The term “substitute check” means a paper reproduction of the original check that—

(A) contains an image of the front and back of the original check;

(B) bears a MICR line containing all the information appearing on the MICR line of the original check, except as provided under generally applicable industry standards for substitute checks to facilitate the processing of substitute checks;

(C) conforms, in paper stock, dimension, and otherwise, with generally applicable industry standards for substitute checks; and

(D) is suitable for automated processing in the same manner as the original check.

(17) State

The term “State” has the same meaning as in section 1813(a) of this title.

(18) Truncate

The term “truncate” means to remove an original paper check from the check collection or return process and send to a recipient, in lieu of such original paper check, a substitute check or, by agreement, information relating to the original check (including data taken from the MICR line of the original check or an electronic image of the original check), whether with or without subsequent delivery of the original paper check.

(19) Uniform Commercial Code

The term “Uniform Commercial Code” means the Uniform Commercial Code in effect in a State.

(20) Other terms

Unless the context requires otherwise, the terms not defined in this section shall have the same meanings as in the Uniform Commercial Code.

(Pub. L. 108–100, §3, Oct. 28, 2003, 117 Stat. 1178.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5003. General provisions governing substitute checks

(a) No agreement required

A person may deposit, present, or send for collection or return a substitute check without an agreement with the recipient, so long as a bank has made the warranties in section 5004 of this title with respect to such substitute check.

(b) Legal equivalence

A substitute check shall be the legal equivalent of the original check for all purposes, including any provision of any Federal or State law, and for all persons if the substitute check—

(1) accurately represents all of the information on the front and back of the original check as of the time the original check was truncated; and

(2) bears the legend: “This is a legal copy of your check. You can use it the same way you would use the original check.”

(c) Endorsements

A bank shall ensure that the substitute check for which the bank is the reconverting bank bears all endorsements applied by parties that previously handled the check (whether in electronic form or in the form of the original paper check or a substitute check) for forward collection or return.

(d) Identification of reconverting bank

A bank shall identify itself as a reconverting bank on any substitute check for which the bank is a reconverting bank so as to preserve any previous reconverting bank identifications in conformance with generally applicable industry standards.

(e) Applicable law

A substitute check that is the legal equivalent of the original check under subsection (b) shall

be subject to any provision, including any provision relating to the protection of customers, of part 229 of title 12 of the Code of Federal Regulations, the Uniform Commercial Code, and any other applicable Federal or State law as if such substitute check were the original check, to the extent such provision of law is not inconsistent with this chapter.

(Pub. L. 108–100, § 4, Oct. 28, 2003, 117 Stat. 1180.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (e), was in the original “this Act”, meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5004. Substitute check warranties

A bank that transfers, presents, or returns a substitute check and receives consideration for the check warrants, as a matter of law, to the transferee, any subsequent collecting or returning bank, the depository bank, the drawee, the drawer, the payee, the depositor, and any endorser (regardless of whether the warrantee receives the substitute check or another paper or electronic form of the substitute check or original check) that—

(1) the substitute check meets all the requirements for legal equivalence under section 5003(b) of this title; and

(2) no depository bank, drawee, drawer, or endorser will receive presentment or return of the substitute check, the original check, or a copy or other paper or electronic version of the substitute check or original check such that the bank, drawee, drawer, or endorser will be asked to make a payment based on a check that the bank, drawee, drawer, or endorser has already paid.

(Pub. L. 108–100, § 5, Oct. 28, 2003, 117 Stat. 1181.)

§ 5005. Indemnity

(a) Indemnity

A reconverting bank and each bank that subsequently transfers, presents, or returns a substitute check in any electronic or paper form, and receives consideration for such transfer, presentment, or return shall indemnify the transferee, any subsequent collecting or returning bank, the depository bank, the drawee, the drawer, the payee, the depositor, and any endorser, up to the amount described in subsections (b) and (c), as applicable, to the extent of any loss incurred by any recipient of a substitute check if that loss occurred due to the receipt of a substitute check instead of the original check.

(b) Indemnity amount

(1) Amount in event of breach of warranty

The amount of the indemnity under subsection (a) shall be the amount of any loss (including costs and reasonable attorney’s fees and other expenses of representation) proximately caused by a breach of a warranty provided under section 5004 of this title.

(2) Amount in absence of breach of warranty

In the absence of a breach of a warranty provided under section 5004 of this title, the

amount of the indemnity under subsection (a) shall be the sum of—

(A) the amount of any loss, up to the amount of the substitute check; and

(B) interest and expenses (including costs and reasonable attorney’s fees and other expenses of representation).

(c) Comparative negligence

(1) In general

If a loss described in subsection (a) results in whole or in part from the negligence or failure to act in good faith on the part of an indemnified party, then that party’s indemnification under this section shall be reduced in proportion to the amount of negligence or bad faith attributable to that party.

(2) Rule of construction

Nothing in this subsection reduces the rights of a consumer or any other person under the Uniform Commercial Code or other applicable provision of Federal or State law.

(d) Effect of producing original check or copy

(1) In general

If the indemnifying bank produces the original check or a copy of the original check (including an image or a substitute check) that accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated) or is otherwise sufficient to determine whether or not a claim is valid, the indemnifying bank shall—

(A) be liable under this section only for losses covered by the indemnity that are incurred up to the time that the original check or copy is provided to the indemnified party; and

(B) have a right to the return of any funds it has paid under the indemnity in excess of those losses.

(2) Coordination of indemnity with implied warranty

The production of the original check, a substitute check, or a copy under paragraph (1) by an indemnifying bank shall not absolve the bank from any liability on a warranty established under this chapter or any other provision of law.

(e) Subrogation of rights

(1) In general

Each indemnifying bank shall be subrogated to the rights of any indemnified party to the extent of the indemnity.

(2) Recovery under warranty

A bank that indemnifies a party under this section may attempt to recover from another party based on a warranty or other claim.

(3) Duty of indemnified party

Each indemnified party shall have a duty to comply with all reasonable requests for assistance from an indemnifying bank in connection with any claim the indemnifying bank brings against a warrantor or other party related to a check that forms the basis for the indemnification.

(Pub. L. 108-100, § 6, Oct. 28, 2003, 117 Stat. 1181.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(2), was in the original “this Act”, meaning Pub. L. 108-100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5006. Expedited recredit for consumers

(a) Recredit claims

(1) In general

A consumer may make a claim for expedited recredit from the bank that holds the account of the consumer with respect to a substitute check, if the consumer asserts in good faith that—

(A) the bank charged the consumer’s account for a substitute check that was provided to the consumer;

(B) either—

(i) the check was not properly charged to the consumer’s account; or

(ii) the consumer has a warranty claim with respect to such substitute check;

(C) the consumer suffered a resulting loss; and

(D) the production of the original check or a better copy of the original check is necessary to determine the validity of any claim described in subparagraph (B).

(2) 40-day period

Any claim under paragraph (1) with respect to a consumer account may be submitted by a consumer before the end of the 40-day period beginning on the later of—

(A) the date on which the financial institution mails or delivers, by a means agreed to by the consumer, the periodic statement of account for such account which contains information concerning the transaction giving rise to the claim; or

(B) the date on which the substitute check is made available to the consumer.

(3) Extension under extenuating circumstances

If the ability of the consumer to submit the claim within the 40-day period under paragraph (2) is delayed due to extenuating circumstances, including extended travel or the illness of the consumer, the 40-day period shall be extended by a reasonable amount of time.

(b) Procedures for claims

(1) In general

To make a claim for an expedited recredit under subsection (a) with respect to a substitute check, the consumer shall provide to the bank that holds the account of such consumer—

(A) a description of the claim, including an explanation of—

(i) why the substitute check was not properly charged to the consumer’s account; or

(ii) the warranty claim with respect to such check;

(B) a statement that the consumer suffered a loss and an estimate of the amount of the loss;

(C) the reason why production of the original check or a better copy of the original check is necessary to determine the validity of the charge to the consumer’s account or the warranty claim; and

(D) sufficient information to identify the substitute check and to investigate the claim.

(2) Claim in writing

(A) In general

The bank holding the consumer account that is the subject of a claim by the consumer under subsection (a) may, in the discretion of the bank, require the consumer to submit the information required under paragraph (1) in writing.

(B) Means of submission

A bank that requires a submission of information under subparagraph (A) may permit the consumer to make the submission electronically, if the consumer has agreed to communicate with the bank in that manner.

(c) Recredit to consumer

(1) Conditions for recredit

The bank shall recredit a consumer account in accordance with paragraph (2) for the amount of a substitute check that was charged against the consumer account if—

(A) a consumer submits a claim to the bank with respect to that substitute check that meets the requirement of subsection (b); and

(B) the bank has not—

(i) provided to the consumer—

(I) the original check; or

(II) a copy of the original check (including an image or a substitute check) that accurately represents all of the information on the front and back of the original check, as of the time at which the original check was truncated; and

(ii) demonstrated to the consumer that the substitute check was properly charged to the consumer account.

(2) Timing of recredit

(A) In general

The bank shall recredit the consumer’s account for the amount described in paragraph (1) no later than the end of the business day following the business day on which the bank determines the consumer’s claim is valid.

(B) Recredit pending investigation

If the bank has not yet determined that the consumer’s claim is valid before the end of the 10th business day after the business day on which the consumer submitted the claim, the bank shall recredit the consumer’s account for—

(i) the lesser of the amount of the substitute check that was charged against the consumer account, or \$2,500, together with interest if the account is an interest-bearing account, no later than the end of such 10th business day; and

(ii) the remaining amount of the substitute check that was charged against the

consumer account, if any, together with interest if the account is an interest-bearing account, not later than the 45th calendar day following the business day on which the consumer submits the claim.

(d) Availability of recredit

(1) Next business day availability

Except as provided in paragraph (2), a bank that provides a recredit to a consumer account under subsection (c) shall make the recredited funds available for withdrawal by the consumer by the start of the next business day after the business day on which the bank recredits the consumer's account under subsection (c).

(2) Safeguard exceptions

A bank may delay availability to a consumer of a recredit provided under subsection (c)(2)(B)(i) until the start of either the business day following the business day on which the bank determines that the consumer's claim is valid or the 45th calendar day following the business day on which the consumer submits a claim for such recredit in accordance with subsection (b), whichever is earlier, in any of the following circumstances:

(A) New accounts

The claim is made during the 30-day period beginning on the business day the consumer account was established.

(B) Repeated overdrafts

Without regard to the charge that is the subject of the claim for which the recredit was made—

(i) on 6 or more business days during the 6-month period ending on the date on which the consumer submits the claim, the balance in the consumer account was negative or would have become negative if checks or other charges to the account had been paid; or

(ii) on 2 or more business days during such 6-month period, the balance in the consumer account was negative or would have become negative in the amount of \$5,000 or more if checks or other charges to the account had been paid.

(C) Prevention of fraud losses

The bank has reasonable cause to believe that the claim is fraudulent, based on facts (other than the fact that the check in question or the consumer is of a particular class) that would cause a well-grounded belief in the mind of a reasonable person that the claim is fraudulent.

(3) Overdraft fees

No bank that, in accordance with paragraph (2), delays the availability of a recredit under subsection (c) to any consumer account may impose any overdraft fees with respect to drafts drawn by the consumer on such recredited amount before the end of the 5-day period beginning on the date notice of the delay in the availability of such amount is sent by the bank to the consumer.

(e) Reversal of recredit

A bank may reverse a recredit to a consumer account if the bank—

(1) determines that a substitute check for which the bank recredited a consumer account under subsection (c) was in fact properly charged to the consumer account; and

(2) notifies the consumer in accordance with subsection (f)(3).

(f) Notice to consumer

(1) Notice if consumer claim not valid

If a bank determines that a substitute check subject to the consumer's claim was in fact properly charged to the consumer's account, the bank shall send to the consumer, no later than the business day following the business day on which the bank makes a determination—

(A) the original check or a copy of the original check (including an image or a substitute check) that—

(i) accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated); or

(ii) is otherwise sufficient to determine whether or not the consumer's claim is valid; and

(B) an explanation of the basis for the determination by the bank that the substitute check was properly charged, including a statement that the consumer may request copies of any information or documents on which the bank relied in making the determination.

(2) Notice of recredit

If a bank recredits a consumer account under subsection (c), the bank shall send to the consumer, no later than the business day following the business day on which the bank makes the recredit, a notice of—

(A) the amount of the recredit; and

(B) the date the recredited funds will be available for withdrawal.

(3) Notice of reversal of recredit

In addition to the notice required under paragraph (1), if a bank reverses a recredited amount under subsection (e), the bank shall send to the consumer, no later than the business day following the business day on which the bank reverses the recredit, a notice of—

(A) the amount of the reversal; and

(B) the date the recredit was reversed.

(4) Mode of delivery

A notice described in this subsection shall be delivered by United States mail or by any other means through which the consumer has agreed to receive account information.

(g) Other claims not affected

Providing a recredit in accordance with this section shall not absolve the bank from liability for a claim made under any other law, such as a claim for wrongful dishonor under the Uniform Commercial Code, or from liability for additional damages under section 5005 or 5009 of this title.

(h) Clarification concerning consumer possession

A consumer who was provided a substitute check may make a claim for an expedited re-

credit under this section with regard to a transaction involving the substitute check whether or not the consumer is in possession of the substitute check.

(i) Scope of application

This section shall only apply to customers who are consumers.

(Pub. L. 108-100, §7, Oct. 28, 2003, 117 Stat. 1182.)

§ 5007. Expedited recredit procedures for banks

(a) Recredit claims

(1) In general

A bank may make a claim against an indemnifying bank for expedited recredit for which that bank is indemnified if—

(A) the claimant bank (or a bank that the claimant bank has indemnified) has received a claim for expedited recredit from a consumer under section 5006 of this title with respect to a substitute check or would have been subject to such a claim had the consumer's account been charged;

(B) the claimant bank has suffered a resulting loss or is obligated to recredit a consumer account under section 5006 of this title with respect to such substitute check; and

(C) production of the original check, another substitute check, or a better copy of the original check is necessary to determine the validity of the charge to the customer account or any warranty claim connected with such substitute check.

(2) 120-day period

Any claim under paragraph (1) may be submitted by the claimant bank to an indemnifying bank before the end of the 120-day period beginning on the date of the transaction that gave rise to the claim.

(b) Procedures for claims

(1) In general

To make a claim under subsection (a) for an expedited recredit relating to a substitute check, the claimant bank shall send to the indemnifying bank—

(A) a description of—

(i) the claim, including an explanation of why the substitute check cannot be properly charged to the consumer account; or

(ii) the warranty claim;

(B) a statement that the claimant bank has suffered a loss or is obligated to recredit the consumer's account under section 5006 of this title, together with an estimate of the amount of the loss or recredit;

(C) the reason why production of the original check, another substitute check, or a better copy of the original check is necessary to determine the validity of the charge to the consumer account or the warranty claim; and

(D) information sufficient for the indemnifying bank to identify the substitute check and to investigate the claim.

(2) Requirements relating to copies of substitute checks

If the information submitted by a claimant bank pursuant to paragraph (1) in connection

with a claim for an expedited recredit includes a copy of any substitute check for which any such claim is made, the claimant bank shall take reasonable steps to ensure that any such copy cannot be—

(A) mistaken for the legal equivalent of the check under section 5003(b) of this title; or

(B) sent or handled by any bank, including the indemnifying bank, as a forward collection or returned check.

(3) Claim in writing

(A) In general

An indemnifying bank may, in the discretion of the bank, require the claimant bank to submit the information required by paragraph (1) in writing, including a copy of the written or electronically submitted claim, if any, that the consumer provided in accordance with section 5006(b) of this title.

(B) Means of submission

An indemnifying bank that requires a submission of information under subparagraph (A) may permit the claimant bank to make the submission electronically, if the claimant bank has agreed to communicate with the indemnifying bank in that manner.

(c) Recredit by indemnifying bank

(1) Prompt action required

No later than 10 business days after the business day on which an indemnifying bank receives a claim under subsection (a) from a claimant bank with respect to a substitute check, the indemnifying bank shall—

(A) provide, to the claimant bank, the original check (with respect to such substitute check) or a copy of the original check (including an image or a substitute check) that—

(i) accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated); or

(ii) is otherwise sufficient to determine the bank's claim is not valid; and

(B) recredit the claimant bank for the amount of the claim up to the amount of the substitute check, plus interest if applicable; or

(C) provide information to the claimant bank as to why the indemnifying bank is not obligated to comply with subparagraph (A) or (B).

(2) Recredit does not abrogate other liabilities

Providing a recredit under this subsection to a claimant bank with respect to a substitute check shall not absolve the indemnifying bank from liability for claims brought under any other law or from additional damages under section 5005 or 5009 of this title with respect to such check.

(3) Refund to indemnifying bank

If a claimant bank reverses, in accordance with section 5006(e) of this title, a recredit previously made to a consumer account under section 5006(c) of this title, or otherwise receives a credit or recredit with regard to such

substitute check, the claimant bank shall promptly refund to any indemnifying bank any amount previously advanced by the indemnifying bank in connection with such substitute check.

(d) Production of original check or a sufficient copy governed by section 5005(d)

If the indemnifying bank provides the claimant bank with the original check or a copy of the original check (including an image or a substitute check) under subsection (c)(1)(A), section 5005(d) of this title shall govern any right of the indemnifying bank to any repayment of any funds the indemnifying bank has reccredited to the claimant bank pursuant to subsection (c).

(Pub. L. 108–100, § 8, Oct. 28, 2003, 117 Stat. 1186.)

§ 5008. Delays in an emergency

A delay by a bank beyond the time limits prescribed or permitted by this chapter shall be excused if the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of a bank and if the bank uses such diligence as the circumstances require.

(Pub. L. 108–100, § 9, Oct. 28, 2003, 117 Stat. 1188.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5009. Measure of damages

(a) Liability

(1) In general

Except as provided in section 5005 of this title, any person who, in connection with a substitute check, breaches any warranty under this chapter or fails to comply with any requirement imposed by, or regulation prescribed pursuant to, this chapter with respect to any other person shall be liable to such person in an amount equal to the sum of—

(A) the lesser of—

(i) the amount of the loss suffered by the other person as a result of the breach or failure; or

(ii) the amount of the substitute check; and

(B) interest and expenses (including costs and reasonable attorney’s fees and other expenses of representation) related to the substitute check.

(2) Offset of recredits

The amount of damages any person receives under paragraph (1), if any, shall be reduced by the amount, if any, that the claimant receives and retains as a recredit under section 5006 or 5007 of this title.

(b) Comparative negligence

(1) In general

If a person incurs damages that resulted in whole or in part from the negligence or failure

of that person to act in good faith, then the amount of any liability due to that person under subsection (a) shall be reduced in proportion to the amount of negligence or bad faith attributable to that person.

(2) Rule of construction

Nothing in this subsection reduces the rights of a consumer or any other person under the Uniform Commercial Code or other applicable provision of Federal or State law.

(Pub. L. 108–100, § 10, Oct. 28, 2003, 117 Stat. 1188.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original “this Act”, meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5010. Statute of limitations and notice of claim

(a) Actions under this chapter

(1) In general

An action to enforce a claim under this chapter may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 1-year period beginning on the date the cause of action accrues.

(2) Accrual

A cause of action accrues as of the date the injured party first learns, or by which such person reasonably should have learned, of the facts and circumstances giving rise to the cause of action.

(b) Discharge of claims

Except as provided in subsection (c), unless a person gives notice of a claim to the indemnifying or warranting bank within 30 days after the person has reason to know of the claim and the identity of the indemnifying or warranting bank, the indemnifying or warranting bank is discharged from liability in an action to enforce a claim under this chapter to the extent of any loss caused by the delay in giving notice of the claim.

(c) Notice of claim by consumer

A timely claim by a consumer under section 5006 of this title for expedited recredit constitutes timely notice of a claim by the consumer for purposes of subsection (b).

(Pub. L. 108–100, § 11, Oct. 28, 2003, 117 Stat. 1188.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (b), was in the original “this Act”, meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5011. Consumer awareness

(a) In general

Each bank shall provide, in accordance with subsection (b), a brief notice about substitute checks that describes—

(1) how a substitute check is the legal equivalent of an original check for all purposes, in-

cluding any provision of any Federal or State law, and for all persons, if the substitute check—

(A) accurately represents all of the information on the front and back of the original check as of the time at which the original check was truncated; and

(B) bears the legend: “This is a legal copy of your check. You can use it in the same way you would use the original check.”; and

(2) the consumer recredit rights established under section 5006 of this title when a consumer believes in good faith that a substitute check was not properly charged to the account of the consumer.

(b) Distribution

(1) Existing customers

With respect to consumers who are customers of a bank on the effective date of this chapter and who receive original checks or substitute checks, a bank shall provide the notice described in subsection (a) to each such consumer no later than the first regularly scheduled communication with the consumer after the effective date of this chapter.

(2) New account holders

A bank shall provide the notice described in subsection (a) to each consumer who will receive original checks or substitute checks, other than existing customers referred to in paragraph (1), at the time at which the customer relationship is initiated.

(3) Mode of delivery

A bank may send the notices required by this subsection by United States mail or by any other means through which the consumer has agreed to receive account information.

(4) Consumers who request copies of checks

Notice shall be provided to each consumer of the bank that requests a copy of a check and receives a substitute check, at the time of the request.

(c) Model language

(1) In general

Before the end of the 9-month period beginning on October 28, 2003, the Board shall publish model forms and clauses that a bank may use to describe each of the elements required by subsection (a).

(2) Safe harbor

(A) In general

A bank shall be treated as being in compliance with the requirements of subsection (a) if the bank’s substitute check notice uses a model form or clause published by the Board and such model form or clause accurately describes the bank’s policies and practices.

(B) Deletion or rearrangement

A bank may delete any information in the model form or clause that is not required by this chapter or rearrange the format.

(3) Use of model language not required

This section shall not be construed as requiring any bank to use a model form or

clause that the Board prepares under this subsection.

(Pub. L. 108-100, § 12, Oct. 28, 2003, 117 Stat. 1189.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b)(1), is at the end of the 12-month period beginning on Oct. 28, 2003, except as otherwise specifically provided in this chapter, see section 20 of Pub. L. 108-100, set out as an Effective Date note under section 5001 of this title.

This chapter, referred to in subsec. (c)(2)(B), was in the original “this Act”, meaning Pub. L. 108-100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5012. Effect on other law

This chapter shall supersede any provision of Federal or State law, including the Uniform Commercial Code, that is inconsistent with this chapter, but only to the extent of the inconsistency.

(Pub. L. 108-100, § 13, Oct. 28, 2003, 117 Stat. 1190.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 108-100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5013. Variation by agreement

(a) Section 5007

Any provision of section 5007 of this title may be varied by agreement of the banks involved.

(b) No other provisions may be varied

Except as provided in subsection (a), no provision of this chapter may be varied by agreement of any person or persons.

(Pub. L. 108-100, § 14, Oct. 28, 2003, 117 Stat. 1190.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 108-100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5014. Regulations

The Board may prescribe such regulations as the Board determines to be necessary to implement, prevent circumvention or evasion of, or facilitate compliance with the provisions of this chapter.

(Pub. L. 108-100, § 15, Oct. 28, 2003, 117 Stat. 1190.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 108-100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5015. Study and report on funds availability

(a) Study

In order to evaluate the implementation and the impact of this chapter, the Board shall conduct a study of—

(1) the percentage of total checks cleared in which the paper check is not returned to the paying bank;

(2) the extent to which banks make funds available to consumers for local and nonlocal checks prior to the expiration of maximum hold periods;

(3) the length of time within which depository banks learn of the nonpayment of local and nonlocal checks;

(4) the increase or decrease in check-related losses over the study period; and

(5) the appropriateness of the time periods and amount limits applicable under sections 4002 and 4003 of this title, as in effect on October 28, 2003.

(b) Report to Congress

Before the end of the 30-month period beginning on the effective date of this chapter, the Board shall submit a report to the Congress containing the results of the study conducted under this section, together with recommendations for legislative action.

(Pub. L. 108-100, § 16, Oct. 28, 2003, 117 Stat. 1190.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 108-100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

The effective date of this chapter, referred to in subsec. (b), is at the end of the 12-month period beginning on Oct. 28, 2003, except as otherwise specifically provided in this chapter, see section 20 of Pub. L. 108-100, set out as an Effective Date note under section 5001 of this title.

§ 5016. Statistical reporting of costs and revenues for transporting checks between reserve banks

In the annual report prepared by the Board for the first full calendar year after October 28, 2003, and in each of the 9 subsequent annual reports by the Board, the Board shall include the amount of operating costs attributable to, and an estimate of the Federal Reserve banks’ imputed revenues derived from, the transportation of commercial checks between Federal Reserve bank check processing centers.

(Pub. L. 108-100, § 17, Oct. 28, 2003, 117 Stat. 1191.)

§ 5017. Evaluation and report by the Comptroller General

(a) Study

During the 5-year period beginning on October 28, 2003, the Comptroller General of the United States shall evaluate the implementation and administration of this chapter, including—

(1) an estimate of the gains in economic efficiency made possible from check truncation;

(2) an evaluation of the benefits accruing to consumers and financial institutions from reduced transportation costs, longer hours for accepting deposits for credit within 1 business day, the impact of fraud losses, and an estimate of consumers’ share of the total benefits derived from this chapter; and

(3) an assessment of consumer acceptance of the check truncation process resulting from

this chapter, as well as any new costs incurred by consumers who had their original checks returned with their regular monthly statements prior to October 28, 2003.

(b) Report to Congress

Before the end of the 5-year period referred to in subsection (a), the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General in connection with the evaluation conducted pursuant to subsection (a), together with such recommendations for legislative and administrative action as the Comptroller General may determine to be appropriate.

(Pub. L. 108-100, § 18, Oct. 28, 2003, 117 Stat. 1191.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 108-100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

§ 5018. Depository services efficiency and cost reduction

(a) Findings

The Congress finds as follows:

(1) The Secretary of the Treasury has long compensated financial institutions for various critical depository and financial agency services provided for or on behalf of the United States by—

(A) placing large balances, commonly referred to as “compensating balances”, on deposit at such institutions; and

(B) using imputed interest on such funds to offset charges for the various depository and financial agency services provided to or on behalf of the Government.

(2) As a result of sharp declines in interest rates over the last few years to record low levels, or the public debt outstanding reaching the statutory debt limit, the Department of the Treasury often has had to dramatically increase or decrease the size of the compensating balances on deposit at these financial institutions.

(3) The fluctuation of the compensating balances, and the necessary pledging of collateral by financial institutions to secure the value of compensating balances placed with those institutions, have created unintended financial uncertainty for the Secretary of the Treasury and for the management by financial institutions of their cash and securities.

(4) It is imperative that the process for providing financial services to the Government be transparent, and provide the information necessary for the Congress to effectively exercise its appropriation and oversight responsibilities.

(5) The use of direct payment for services rendered would strengthen cash and debt management responsibilities of the Secretary of the Treasury because the Secretary would no longer need to dramatically increase or decrease the level of such balances when interest rates fluctuate sharply or when the public

debt outstanding reaches the statutory debt limit.

(6) An alternative to the use of compensating balances, such as direct payments to financial institutions, would ensure that payments to financial institutions for the services they provide would be made in a more predictable manner and could result in cost savings.

(7) Limiting the use of compensating balances could result in a more direct and cost-efficient method of obtaining those services currently provided under compensating balance arrangements.

(8) A transition from the use of compensating balances to another compensation method must be carefully managed to prevent higher-than-necessary transitional costs and enable participating financial institutions to modify their planned investment of cash and securities.

(b) Authorization of appropriations for services rendered by depositaries and financial agencies of the United States

There are authorized to be appropriated for fiscal years beginning after fiscal year 2003 to the Secretary of the Treasury such sums as may be necessary for reimbursing financial institutions in their capacity as depositaries and financial agents of the United States for all services required or directed by the Secretary of the Treasury, or a designee of the Secretary, to be performed by such financial institutions on behalf of the Secretary of the Treasury or another Federal agency, including services rendered before fiscal year 2004.

(c) Orderly transition

(1) In general

As appropriations authorized in subsection (b) become available, the Secretary of the Treasury shall promptly begin the process of phasing in the use of the appropriations to pay financial institutions serving as depositaries and financial agents of the United States, and transitioning from the use of compensating balances to fund these services.

(2) Post-transition use limited to extraordinary circumstances

(A) In general

Following the transition to the use of the appropriations authorized in subsection (b), the Secretary of the Treasury may use the compensating balances to pay financial institutions serving as depositaries and financial agents of the United States only in extraordinary situations where the Secretary determines that they are needed to ensure the fiscal operations of the Government continue to function in an efficient and effective manner.

(B) Report

Any use of compensating balances pursuant to subparagraph (A) shall promptly be reported by the Secretary of the Treasury to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(3) Requirements for orderly transition

In transitioning to the use of the appropriations authorized in subsection (b), the Secretary of the Treasury shall take such steps as may be appropriate to—

(A) prevent abrupt financial disruption to the functions of the Department of the Treasury or to the participating financial institutions; and

(B) maintain adequate accounting and management controls to ensure that payments to financial institutions for their banking services provided to the Government as depositaries and financial agents are accurate and that the arrangements last no longer than is necessary.

(4) Reports required

(A) Annual report

(i) In general

For each fiscal year, the Secretary of the Treasury shall submit a report to the Congress on the use of compensating balances and on the use of appropriations authorized in subsection (b) during that fiscal year.

(ii) Inclusion in budget

The report required under clause (i) may be submitted as part of the budget submitted by the President under section 1105 of title 31 for the following fiscal year and if so, the report shall be submitted concurrently to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) Final report following transition

(i) In general

Following completion of the transition from the use of compensating balances to the use of the appropriations authorized in subsection (b) to pay financial institutions for their services as depositaries and financial agents of the United States, the Secretary of the Treasury shall submit a report on the transition to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(ii) Contents of report

The report submitted under clause (i) shall include a detailed analysis of—

(I) the cost of transition;

(II) the direct costs of the services being paid from the appropriations authorized in subsection (b); and

(III) the benefits realized from the use of direct payment for such services, rather than the use of compensating balance arrangements.

(d) Omitted

(e) Effective date

Notwithstanding section 20,¹ this section shall take effect on October 28, 2003.

¹ See References in Text note below.

(Pub. L. 108–100, § 19, Oct. 28, 2003, 117 Stat. 1191.)

REFERENCES IN TEXT

Section 20, referred to in subsec. (e), means section 20 of Pub. L. 108–100, which is set out as an Effective Date note under section 5001 of this title.

CODIFICATION

Section is comprised of section 19 of Pub. L. 108–100. Subsec. (d) of section 19 of Pub. L. 108–100 amended section 412 of this title.

FUNDS FOR REIMBURSEMENT FOR DEPOSITORY AND FINANCIAL AGENCY SERVICES

Pub. L. 108–199, div. F, title II, § 218, Jan. 23, 2004, 118 Stat. 321, provided that: “For fiscal year 2004 and each fiscal year thereafter, there are appropriated to the Secretary of the Treasury such sums as may be necessary to reimburse financial institutions in their capacity as depositories and financial agents of the United States for all services required or directed by the Secretary of the Treasury, or the Secretary’s designee, to be performed by such financial institutions on behalf of the Department of the Treasury or other Federal agencies, including services rendered prior to fiscal year 2004.”

CHAPTER 51—SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING

Sec.

- 5101. Purposes and methods for establishing a mortgage licensing system and registry.
- 5102. Definitions.
- 5103. License or registration required.
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- 5108. Backup authority to establish a nationwide mortgage licensing and registry system.
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§ 5101. Purposes and methods for establishing a mortgage licensing system and registry

In order to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud, the States, through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, are hereby encouraged to establish a Nationwide Mortgage Licensing System and Registry for the residential mortgage industry that accomplishes all of the following objectives:

- (1) Provides uniform license applications and reporting requirements for State-licensed loan originators.
- (2) Provides a comprehensive licensing and supervisory database.
- (3) Aggregates and improves the flow of information to and between regulators.
- (4) Provides increased accountability and tracking of loan originators.

(5) Streamlines the licensing process and reduces the regulatory burden.

(6) Enhances consumer protections and supports anti-fraud measures.

(7) Provides consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.

(8) Establishes a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer.

(9) Facilitates responsible behavior in the subprime mortgage market place and provides comprehensive training and examination requirements related to subprime mortgage lending.

(10) Facilitates the collection and disbursement of consumer complaints on behalf of State and Federal mortgage regulators.

(Pub. L. 110–289, div. A, title V, § 1502, July 30, 2008, 122 Stat. 2810.)

SHORT TITLE

Pub. L. 110–289, div. A, title V, § 1501, July 30, 2008, 122 Stat. 2810, provided that: “This title [enacting this chapter] may be cited as the ‘Secure and Fair Enforcement for Mortgage Licensing Act of 2008’ or ‘S.A.F.E. Mortgage Licensing Act of 2008’.”

§ 5102. Definitions

For purposes of this chapter, the following definitions shall apply:

(1) Bureau

The term “Bureau” means the Bureau of Consumer Financial Protection.

(2) Federal banking agency

The term “Federal banking agency” means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(3) Depository institution

The term “depository institution” has the same meaning as in section 1813 of this title, and includes any credit union.

(4) Loan originator

(A) In general

The term “loan originator”—

(i) means an individual who—

(I) takes a residential mortgage loan application; and

(II) offers or negotiates terms of a residential mortgage loan for compensation or gain;

(ii) does not include any individual who is not otherwise described in clause (i) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause;

(iii) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, un-